



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
February 4, 2015**

TO: City Council
FROM: Rob Schroder, Mayor
SUBJECT: Appointment of New City Manager and Approval of Employment Agreement
DATE: January 30, 2015

RECOMMENDATION:

Appoint Rob Braulik as the new City Manager, approve Mr. Braulik's Employment Agreement, and authorize Mayor to execute same.

BACKGROUND:

The City Council conducted interviews in December to fill the permanent City Manager vacancy. After selecting Mr. Braulik as the top candidate, negotiations for the employment contract commenced. The process is complete and the agreement is before Council this evening for approval. The agreement specifies salary and benefit provisions and other terms and conditions of employment similar to those in previous agreements for City Manager.

FISCAL IMPACT:

The funds for the City Manager's salary are currently appropriated in the City's FY14-15 operating budget. There is no impact to the General Fund.

ACTION:

Motion to appoint Rob Braulik as the new City Manager, approve Mr. Braulik's Employment Agreement, and authorize the Mayor to execute same.

Attachment:
Employment Agreement

**EMPLOYMENT AGREEMENT
CITY MANAGER**

THIS AGREEMENT (“Agreement”) is entered into and is effective as of _____, 2015 (“Effective Date”), by and between the CITY OF MARTINEZ, a municipal corporation (hereinafter referred to as "City"), and ROBERT BRAULIK (hereinafter referred to as "Braulik" or “Employee”), with reference to the following facts:

RECITALS

WHEREAS, the City Council is desirous of employing Braulik to act as and perform the duties of the City Manager.

WHEREAS, Braulik represents that he is qualified to perform the duties and services of the position of City Manager and is agreeable to filling that position.

WHEREAS, the City has adopted an ordinance establishing the City Manager form of government in the City of Martinez and setting forth the duties and responsibilities of the City Manager.

WHEREAS, it is the desire of the City and Braulik to enter into an Employment Agreement concerning compensation, benefits, terms and conditions of his employment as the City Manager and to serve the following purposes:

A. To retain Braulik to perform services in a professional manner and to provide his compensation and employment benefits which will induce Braulik to remain in the employment of the City as City Manager as specified herein;

B. To reserve to the City, however, a fair and just means of (i) terminating the employment of Employee as City Manager in the event that Braulik, for any reason, becomes unable or unwilling to discharge fully the duties of the office of City Manager, or (ii) terminating the employment of Braulik as City Manager in the exercise of the right of the City Council to fill the position of City Manager as the Council sees fit.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

AGREEMENT

1. **EMPLOYMENT.** City hereby employs the Employee, and the Employee hereby accepts employment with the City in the position of City Manager, on the terms and conditions and for the compensation herein set forth.

2. **SCOPE OF DUTIES AND SERVICES.**

a. Under the terms and conditions of this Agreement, Employee shall personally provide all the services and duties ordinarily performed by the City Manager for the City under the direction and control of the City Council and as set forth in the Martinez Municipal Code. Employee has the authority to interview, hire and fire employees, and

direct the workforce subject to the specific limitations set forth in the Martinez Municipal Code. Employee shall perform his obligations and responsibilities diligently within the time parameters indicated by the City Council, applying the highest degree of professionalism, ethics, integrity and competency to the discharge of every aspect of his obligations.

b. Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with his reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission (“FPPC”).

c. Employee agrees to remain in the exclusive employ of the City during the term of this Agreement. Employee shall dedicate his full energies and qualifications to his employment as the City Manager, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Council.

3. **TERM.** The term of this Agreement shall begin on the Effective Date and may be terminated in accordance with the terms and conditions of this Agreement.

4. **COMPENSATION AND BENEFITS.** For the services to be provided pursuant to this Agreement, Employee shall receive the following compensation and benefits:

a. MCP Benefits. Employee shall be provided the benefits offered to all other management employees and discharge the obligations and duties imposed upon all other management employees as provided for in the Management Compensation Plan (“MCP”) as it may be amended from time to time, except as modified and provided for herein. As used herein, benefits include but are not necessarily limited to, vacation, sick leave, holidays, administrative leave, retirement (City currently pays 4% of Employee’s share of CalPERS cost), health insurance, dental insurance, car allowance, long-term disability insurance, and life insurance. Employee shall not be compensated for any hours worked overtime because Employee is exempt from overtime under the Federal Fair Labor Standards Act.

b. Salary. Employee shall be paid an annual salary of two hundred thousand dollars (\$200,000.00). Employee’s salary shall not be adjusted automatically in an amount equal to any percentage adjustment provided to all other management employees of the City, as set forth in the MCP, during the term of this Agreement. Employee’s salary may be adjusted in accordance with and as part of Employee’s performance evaluation by the City Council. In this connection, as part of Employee’s first, six month performance evaluation described in Section 8, below, Employee shall be eligible for an increase in his annual salary to two hundred five thousand dollars (\$205,000.00). Whether or not and the extent to which Employee’s salary is adjusted by reason of any of said evaluations shall be left to the sole and unfettered discretion of the City Council. Employee’s salary shall be payable at the same time as other management employees of the City and in accordance with established City procedures.

c. Other Benefits. During the term of this Agreement, City shall provide Employee the following, additional benefits.

Municipal Code. The parties agree that Employee serves at the will of the City Council and that this Agreement contains all of the terms and conditions of Employee's employment. Employee waives any and all rights that he may have (i) to challenge or appeal any such termination or (ii) to invoke any due process (procedural or substantive) rights or protections as conditions to the City's right to terminate his employment hereunder.

a. Termination Without Cause = Severance Pay.

1) In the event that the City Council terminates Employee's employment for any reason other than for cause, then the City shall give Employee notice that his employment and this Agreement shall terminate no sooner than nine (9) months following the delivery of the notice. During said nine (9) months period, Employee shall not be entitled to any increase in salary or in benefits. During said nine (9) months period, (i) Employee shall not accrue any additional leaves under Section 4(d); and (ii) the City shall make no payments for nor budget any sums under Section 4 (e).

2) Alternatively, in the event that the City Council terminates Employee's employment for any reason other than for cause, then the City shall give Employee notice that his employment and this Agreement shall terminate immediately upon delivery of said termination notice and the City shall continue, for nine (9) months after Employee's termination is effective, at the time and under those conditions applicable to other management employees, to pay Employee his base salary which the City is offering to Employee as of the date termination notice is delivered to him. During said nine (9) months period, Employee shall not be entitled to any increase in salary nor shall he be entitled to any increase in benefits. Notwithstanding the foregoing, during said nine (9) months period, (i) the City shall not continue providing life insurance benefits to Employee pursuant to Section 4; (ii) Employee shall not accrue any additional leaves under Section 4(d); and (iii) the City shall make no payments for nor budget any sums under Sections 4 (e) and 4(f).

b. Other Employment Within Said Nine (9) Months. In the event that Employee obtains any other full time employment similar to that described herein within said nine (9) months period, then the City's obligations set forth in Subsection 5 (a) shall thereupon cease, and Employee shall reimburse City any amount which City pays to Employee (or the value of any benefits which City provides or pays for) beyond the commencement date of any such new employment obtained during said nine (9) months period.

c. Termination for Cause. If Employee is terminated by the City Council for any or all of the reasons stated below, then Employee shall not be entitled to any severance pay (or benefits) as described in Subsection 5 (a), above. The City Council shall have the right to terminate Employee's employment as City Manager for cause. For purposes of this Agreement, cause for termination shall include the following:

- 1) Employee's willful or intentional failure to perform in accordance with his obligations under this Agreement and/or the City's Municipal Code or with lawful directives approved by a majority of the City Council;

- 2) Employee's death;

- 3) Employee's mental incapacity or inability to perform his duties hereunder due to physical or mental disability, for a period of sixty (60) days, as determined by a mutually agreed upon medical doctor;

- 4) Willful destruction, theft, misappropriation or misuse of City property;

- 5) Intoxication on duty, whether by alcohol or non-prescriptive drugs;

- 6) Inexcusable absence;

- 7) Conviction of a felony or conviction of a misdemeanor; provided that Employee may be placed on administrative leave without pay should he be charged with such a crime or crimes;

- 8) Dishonesty, fraud or misconduct in office;

- 9) Violation of any conflict of interest laws or regulations;

- 10) Fraud or dishonesty in securing this appointment;

- 11) Political activity involving the support of or opposition to candidates for the City Council of the City of Martinez;

- 12) Violation of State or federal discrimination laws concerning race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sexual orientation, sex or age concerning either members of the general public or City employees(s);

- 13) Willful or unlawful retaliation against any other City official or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or directly related thereto; or

- 14) Violation of the City's harassment policy or any other personnel or employment policy, rule or procedures.

6. **RESIGNATION.** If Employee voluntarily resigns from the position of City Manager, he will provide the City with a minimum of sixty (60) days advance, written notice. During the sixty (60) day period subsequent to said written notice of resignation, Employee shall continue to discharge his duties as City Manager to the best of his ability, unless the City

- c. Notwithstanding the foregoing, the City and the City-related legal entities

described above, may, but shall not be required to, indemnify and/or defend the Employee under the circumstances described and conditions set forth in Cal. Gov't Code ' ' 995.2, 995.4, 995.6, 995.8 and 995.9. Additionally, notwithstanding the foregoing, this Agreement shall not be deemed or construed to constitute a waiver of the rights the City possess under Cal. Gov't Code ' ' 825 and 818.

11. GENERAL PROVISIONS.

- a. Notices. Any notice to be given by either party to the other shall be in writing and shall be considered delivered when transmitted either by personal delivery, overnight mail or by mail, registered or certified, postage pre- paid with return receipt requested and properly addressed as follows:

To City: Mayor & City Council
City of Martinez
525 Henrietta Street
Martinez, CA 94553

To Employee: Robert Braulik

Any party may change his/its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

- b. Waiver. The waiver of any breach of any provision hereunder by either party to this Agreement shall not be deemed to be a waiver of any other provision or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party marking the waiver.

- c. Construction of Terms. The language of all parts of this Agreement shall be construed according to their plain meaning and shall not be construed for or against either party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment or exhibits hereto.

- d. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be unenforceable, void or invalid, in whole or in part, for any reason, the remainder of this Agreement shall remain in full force and effect. In the event of such entire or partial invalidity, the parties hereto agree to enter into supplemental or other agreements to effectuate the intent of the parties and the purpose of this Agreement.

- e. Controlling Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in the County of Contra Costa, State of California.

f. Entire Agreement. This Agreement constitutes the entire Agreement between

the parties pertaining to the employment of Employee by the City and supersedes all prior and contemporaneous agreements, representations, promises and understanding of the parties, whether oral or in writing. No supplement, modification or amendment of this Agreement shall be binding, unless executed in writing by all parties and this Agreement may not be altered, amended or modified by any other means. Each party waives his / its future right to claim, contend, or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver, or estoppel.

g. Other Terms and Conditions of Employment. The Council, in consultation with the Employee, may fix any such other terms and conditions of employment relating to the performance of the Employee, provided the terms or conditions do not conflict with the provisions of this Agreement.

h. Cash Settlements. If, upon the termination of this Agreement, Employee receives any cash settlement from the City related to that termination, the Employee shall fully reimburse the City the amount of said cash settlement if the Employee is convicted of a crime involving an abuse of his office of City Manager. Said reimbursement shall be paid to the City within thirty (30) days after said conviction becomes final and is no longer subject to any appeal.

i. Recitals. The recitals are incorporated by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF MARTINEZ

By: _____
Rob Schroder, Mayor

Robert Braulik